IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 983 of 2003

Maharashtra General Kamgar Union .. Petitioner

versus

Royal Western India Turf Club Ltd.

and others .. Respondents

...

Mr.N.M. Ganguli for the petitioner

Mr.J.P. Cama for the respondent no.1.

Mr.K.P. Anilkumar for the respondent no.3 absent.

CORAM : D.G. KARNIK,J.

DATED : 3rd August 2005.

ORAL JUDGEMENT :-

1. By this petition, the petitioner challenges the judgement and order dated 30th January 2003 passed by the Industrial Court, Mumbai dismissing the

complaint ULP no.1549 of 1991 filed under the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act (for short 'the ULP Act') for want of jurisdiction.

2. Petitioner no.1 is a registered trade union which is espousing the cause of the workmen. Respondent no.1 is a public limited company which carries on business of conducting horse races. Respondent no.2 is also a public limited company and horse owners are its members. Respondent no.3 is also a public limited company and the horse trainers are its members. Several workmen are employed by respondent no.3 in its activity of training the horses. The petitioner filed a complaint under ULP Act alleging that the workman employed by respondent no.3 in the course of training of the horses were the employees of respondent nos.1 and 2. In the complaint, the petitioner alleged unfair labour practices on the part of the respondents under item 6 of Schedule II and item 9 of schedule IV of the ULP Act. The respondent nos.1, 2 and 3 filed separate written statements. The respondent nos.1 and 2 each pleaded that the employees of respondent no.3 were not their employees and also denied the allegations

of unfair labour practises. Respondent no.3 admitted that the employers were its employees but denied the allegations of unfair labour practices. In March 2001 the respondent no.1 moved an application stating that in view of the judgement of the Supreme Court in Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. & Anr. reported in 2001 I CLR 532, the Industrial Court exercising the powers under the ULP Act had no jurisdiction to entertain and try the complaint as the factum of existence of the relationship of employer and employees between the respondent no.1 and the workmen was denied. In the application, it further pleaded that the application was made immediately on knowledge of the decision. It therefore requested the Industrial Court to frame a preliminary issue as to the jurisdiction and decide it as a preliminary issue. The Industrial Court acceded to the said request and after hearing the parties, by a judgement and order dated 3rd July 2002, held that it had the jurisdiction to entertain and try the complaint and rejected the application filed by the respondent no.1. Aggrieved respondent challenged that order by filing of a writ petition bearing no. 4841 of 2002 in this Court. By an order dated 3rd September 2002 passed by consent of the

parties, this Court set aside the order and remanded the matter back to the Industrial Court for consideration afresh in accordance with law laid down by the Supreme Court in the case of Cipla Limited Vs. Maharashtra General Kamgar Union & ors. reported in 2001 I CLR 754. After the remand, the Industrial Court considered the application made by the respondent no.1 afresh and held that as the the Industrial Court exercising the powers u/s.30 of the ULP Act had no jurisdiction to entertain and try the dispute. Such dispute could only be decided in a reference u/s.10 of the Industrial Disputes Act (for short 'the I.D. Act' or the Bombay Industrial Relations Act (for short 'the BIR Act') as the case may be. In view of this finding, the Industrial Court allowed the application made by respondent no.1 and dismissed the complaint filed by the petitioner. That judgement and order is impugned by this petition.

4. In Vividh Kamgar Sabha Vs. Kalyani Steels Ltd & Anr. (Supra), the Supreme Court has held that the provisions of ULP Act can only be enforced by persons who admittedly are workmen. If there is a dispute as to whether the complainants are the

employees of the company then the dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after the status as the workmen is established in appropriate forum that the complaint can be made under the provisions of ULP Act.

5. In Cipla Limited Vs. Maharashtra General Kamgar Union & ors (Supra), a union of workmen had filed a complaint for unfair labour practice. The union alleged that the appellant company had been engaging the workmen but on paper they were shown as employees of a labour contractor, the second respondent therein. The second respondent was only a name lender whereas the appellant company was the real employer of the workmen. The company denied the relationship of the employer and employees and contended that the workmen were not its employees but employees of the labour contractor. The labour court after consideration of the pleadings and evidence came to the conclusion that the arrangement between the appellant company and respondent no.2 labour contractor was bonafide and that the workmen were the employees of the labour contractor. It therefore dismissed the complaint. In the Writ Petition, the

High Court took a different view and held that the workmen in question were the employees of the appellant company and therefore the labour court had the jurisdiction to hear the complaint. Reversing the judgement of the High Court the Supreme Court held that when the question as to whether the workmen concerned were the employees of the company was disputed and was not undisputable, a Labour Court or Industrial Court hearing the complaint under the ULP cannot decide the question whether the workmen were the employees of the company. Such an issue would have to be decided in a reference u/s.10 of the Industrial Disputes Act or in a proceeding under the BIR Act as the case may be.

6. Following the decision of the Supreme Court in Vividh Kamgar Sabha vs. Kalyani Steel Ltd (Supra) this Court in Lokmat Vs. Prabhakar R. Choudhary reported in 2003 I CLR 550 has held that the Industrial Court hearing the complaint under the ULP Act would not have a jurisdiction to decide an issue whether the complainants were the workmen of the respondent company or not if such issue arose on pleadings between the parties. Similar view has been taken by another single Judge of this Court in Indian

Seamless Metal Tubes Ltd. Vs. Sunil Rambhau Iwale & ors. reported in 2001 III CLR 728.

7. In Quadricon Pvt.Ltd. & ors. Vs. Maxi D'Souza & ors reported in 2004 III CLR 530, the complainants had filed a complaint of unfair labour practices against the appellant company and made an application for grant of interim relief. The company opposed the complainant's prayer for grant of interim relief and denied the relationship of employer and employee between the parties. The Industrial Court granted the interim relief in favour of the complainants and restrained the appellant from terminating the services of the complainants without following due process of law pending hearing and final disposal of the complaint. The Industrial Court held that the contention of the company that there was no employer and employee relationship between the company and the complainants could not be prima facie believed. A Writ Petition filed by the company was dismissed by a Single Judge of the Court observing that the appellant had made patently unsustainable attempt to defeat the jurisdiction of the Industrial Court by a bold denial of existence of employer and employee relationship. Reversing the

judgement of the Single Judge, the Division Bench held that the Industrial Court constituted under the ULP Act had no jurisdiction to adjudicate the employer employee relationship nor was there anything like prima facie consideration of employer-employee relationship in a complaint under the ULP Act. The jurisdiction of the Industrial Court in passing an interim order u/s.30(2) was founded upon the consideration of the aspect whether the complaint u/s.28 was entertainable and that depended on the relationship of employer-employee. In a case where the relationship was called in question, the Industrial Court would be required to consider the aspect whether the employer - employee relationship existed which could not be done under the ULP Act and the jurisdiction vested only u/s.10 of the Industrial Disputes Act or the BIR Act as the case may be.

8. In view of the aforesaid decisions referred to above, it is clear that where an issue arises as to whether the relationship of employer - employee exists between the parties, that an issue cannot be adjudicated even incidentally by a Labour Court or an Industrial Court exercising powers under the ULP Act. Such an issue can be decided only by an appropriate

forum under the appropriate Act like section 10 of the I.D. Act or the BIR Act.

9. In sub para (d) and (e) of paragraph no.3, the petitioner has alleged that the activities carried on by the respondent no.1 and the horse owners and the trainees formed parts of one common activity namely the horse racing carried out by an under the supervision and control of the respondent no.1. It was further alleged that the entire activity or business of conducting horse races was an industry in which over 1500 workmen were employed in the various capacities as Jamadars, Asstt. Jamadars etc. The petitioner was aware that the workmen were not directly employed by the respondent no.1 and therefore it had taken the recourse to allege functional integrality between respondent nos.1, 2 and 3 alleging them to be parts of a single industry. The basis of employment of the workmen by respondent no.1 was on the basis of functional integrality between of the industry. The respondent no.1 had categorically denied these allegations in the written statement and has contended :

"..... as there is no

> relationship of an employer and employee direct and or indirect remote or proximate between Respondent No.1 and the persons alleged to be members of the Complainant/union and referred to in the present complaint."

10. In paragraph no.3 of the separate written statement, the respondent no.2 had also denied the relationship in the following words:

> "The Respondent no.2 further submits that there is no privity of contract of employment as between the workers enrolled with Complainant union and Respondent no.1. At no point of time, any members of Respondent no.2 had directly or otherwise engaged any workmen of the Complainant union, and hence, the wild and vague allegations against the Respondent no.2 having indulged in any alleged unfair labour practices as set out in the complaint are false, frivolous, vexatious and malicious."

The petitioner had alleged the relationship of employer and employee while the respondent nos.1 and 2 had denied the existence of such relationship. The defence raised by the respondent nos.1 and 2 was bonafide and in fact the petitioner himself had indirectly admitted that there was no direct employer - employee relationship between the respondent no.1 and the workmen but was claiming

relationship on the basis of alleged functional integrality of operations. As held by the Supreme Court in the case of Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. & ors. (Supra) and Cipla Ltd. Vs. Maharashtra General Kamgar Union & ors. (Supra) that issue could not be heard and decided by the Industrial Court exercising powers u/s.28 of the ULP Act. That issue had to be decided first by an appropriate forum u/s.10 of the I.D. Act or the BIR Act as the case may be. The Industrial Court was thus right in holding that it had no jurisdiction to entertain and try the complaint so far as respondent nos.1 and 2 were concerned.

11. Learned counsel for the petitioner submits that in any event, the respondent no.3 had admitted the relationship of employer - employees between it and the workmen. Therefore, the entire complaint could not have been dismissed. Whether the respondent no.3 was indulging into unfair labour practices or not as alleged in the complaint was an issue which could be decided by the Industrial Court. The Industrial Court could not have dismissed the complaint in its entirety. It could and should have proceeded with the complaint

atleast against respondent no.3. The submission has to be accepted. In the circumstances, the impugned order in so far as it relates to the dismissal of a complaint against the respondent nos.1 and 2 is concerned has to be maintained while the dismissal of a complaint against the respondent no.3 has to be set aside.

12. Accordingly, Writ Petition is partly allowed. Impugned order in so far relating to the dismissal of the complaint against the respondent nos.1 and 2 is confirmed. However, the order in so far as it relates to the dismissal of the complaint against the respondent no.3 the order is set aside and the matter is remanded back to the Industrial Court for decision in accordance with law. In view of the mixed success, parties are directed to bear and pay their own costs throughout.

13. Rule is made partly absolute to the extent indicated above.

D.G. KARNIK, J